

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0405

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB 1082** - 02/03/2004

Introduced by: The Committee on Commerce at the request of the Office of the Secretary of
State

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding registered agents and
2 service of process for certain business entities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 47-34A-110 be amended to read as follows:

5 47-34A-110. Any registered agent of a limited liability company may resign as agent upon
6 filing a written notice of resignation, ~~executed~~ with the secretary of state, ~~who~~. The registered
7 agent shall forthwith mail a copy of the resignation to the limited liability company at its
8 registered office, if not discontinued, and the other copy to the limited liability company at its
9 principal office by certified mail, return receipt requested. The appointment of the agent shall
10 terminate upon the expiration of thirty days after receipt of notice by the secretary of state.

11 Section 2. That § 47-22-46 be amended to read as follows:

12 47-22-46. Any registered agent of a corporation may resign as such agent upon filing ~~an~~
13 ~~original and an exact or conforming copy of a~~ written notice thereof with the secretary of state;
14 ~~who~~. The registered agent shall forthwith mail ~~the~~ a copy to the corporation at its registered
15 office, if not discontinued, and another copy to the corporation at its principal office by certified



1 mail, return receipt requested. The appointment of the agent shall terminate thirty days after
2 receipt of notice by the secretary of state.

3 Section 3. That § 47-8-12.1 be amended to read as follows:

4 47-8-12.1. Any registered agent of a foreign corporation may resign as such agent upon
5 ~~filing an original and one exact or conforming copy of a~~ written notice thereof with the secretary
6 of state, ~~who.~~ The registered agent shall forthwith mail ~~the~~ a copy to the corporation at its
7 principal office by certified mail, return receipt requested in the state or country under whose
8 laws it is incorporated. The appointment of such agent shall terminate thirty days after receipt
9 of notice by the secretary of state.

10 Section 4. That § 47-22-6 be amended to read as follows:

11 47-22-6. The articles of incorporation shall set forth:

- 12 (1) The name of the corporation;
- 13 (2) The period of duration, which may be perpetual;
- 14 (3) The purpose or purposes for which the corporation is organized;
- 15 (4) If the corporation is to have no members, a statement to that effect;
- 16 (5) If the corporation is to have one or more classes of members, any provision which the
17 incorporators elect to set forth in the articles of incorporation designating the class
18 or classes of members and stating the qualifications and rights of the members of
19 each class;
- 20 (6) If the directors or any of them are not to be elected or appointed by one or more
21 classes of members, a statement of the manner in which such directors shall be
22 elected or appointed;
- 23 (7) Any provisions, not inconsistent with law, which the incorporators elect to set forth
24 in the articles of incorporation for the regulation of the internal affairs of the

corporation, including any provision for distribution of assets on dissolution or final liquidation;

(8) The street address, or a statement that there is no street address, of its initial registered office, and the name of its initial registered agent at such address and ~~his~~ the registered agent's written consent to the appointment. Such consent may be given by electronic signature pursuant to chapter 53-12;

(9) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors; and

(10) The name and address of each incorporator.

It is not necessary to set forth in the articles of incorporation any of the corporate powers enumerated in chapters 47-22 to 47-28, inclusive.

Section 5. That § 47-22-44 be amended to read as follows:

47-22-44. A corporation may change its registered office or change its registered agent, or both, upon filing in the Office of the Secretary of State a statement setting forth:

(1) The name of the corporation;

(2) The street address of its current ~~registration~~ registered office or a statement that there is no street address;

(3) If the address of its registered office is to be changed, the street address, or a statement that there is no street address, of its new registered office;

(4) The name of its current registered agent;

(5) If its registered agent is to be changed, the name of its successor registered agent and the new agent's written consent to the appointment. Such consent may be given by electronic signature pursuant to chapter 53-12;

(6) That the street address, or a statement that there is no street address, of its registered

1 office and the address of the office of its registered agent, as changed, will be
2 identical; and

3 (7) That such change was authorized by resolution duly adopted by its board of directors.

4 Such statement shall be executed by the chair of the board of directors, by the corporation's
5 president or by another of the corporation's officers and delivered to the secretary of state.

6 Section 6. That § 47-27-1 be amended to read as follows:

7 47-27-1. Any foreign corporation, in order to procure a certificate of authority to engage in
8 business in this state, shall make application to the secretary of state, which application shall set
9 forth:

10 (1) The name of the corporation and the state or country under the laws of which it is
11 incorporated;

12 (2) The date of incorporation and the period of duration of the corporation;

13 (3) The street address of the principal office of the corporation in the state or country
14 under whose laws it is incorporated;

15 (4) The street address, or a statement that there is no street address, of the proposed
16 registered office of the corporation in this state, and the name of its proposed
17 registered agent in this state at such address and ~~his~~ the registered agent's written
18 consent to the appointment. Such consent may be given by electronic signature
19 pursuant to chapter 53-12;

20 (5) The purpose or purposes of the corporation in engaging in business in this state;

21 (6) The names and respective addresses of the directors and officers of the corporation;
22 and

23 (7) Such additional information as may be necessary in order to enable the secretary of
24 state to determine whether such corporation is entitled to a certificate of authority to

1 engage in business in this state.

2 An original and one exact or conforming copy of the application shall be made on forms
3 prescribed and furnished by the secretary of state and shall be executed and acknowledged by
4 the ~~chairman~~ chair of the board of directors, by the corporation's president, or by another of the
5 corporation's officers.

6 Section 7. That § 47-27-24 be amended to read as follows:

7 47-27-24. Any foreign corporation authorized to engage in business in this state may change
8 its registered office or change its registered agent, or both, upon filing in the Office of the
9 Secretary of State a statement setting forth:

- 10 (1) The name of the corporation;
- 11 (2) The street address, or a statement that there is no street address, of its current
12 registered office;
- 13 (3) If the address of its registered office is to be changed, the street address of the new
14 registered office;
- 15 (4) The name of its current registered agent;
- 16 (5) If its registered agent is to be changed, the name of the new registered agent and the
17 new agent's written consent to the appointment. Such consent may be given by
18 electronic signature pursuant to chapter 53-12;
- 19 (6) That the address of its registered office and the address of the office of its registered
20 agent, as changed, will be identical; and
- 21 (7) That such change was authorized by resolution duly adopted by its board of directors.

22 The statement shall be executed and acknowledged for the corporation by the ~~chairman~~ chair
23 of the board of directors, by the corporation's president, or by another of the corporation's
24 officers or, if the corporation is in the hands of a receiver, trustee, or other court-appointed

1 fiduciary, by that fiduciary.

2 Section 8. That § 47-20-17 be amended to read as follows:

3 47-20-17. A corporation may change its registered office or change its registered agent, or
4 both, upon filing in the Office of the Secretary of State a statement setting forth:

5 (1) The name of the corporation;

6 (2) The street address, or a statement that there is no street address, of its current
7 registered office;

8 (3) If the address of its current registered office is to be changed, the street address, or
9 a statement that there is no street address, of its new registered office;

10 (4) The name of its current registered agent;

11 (5) If its current registered agent is to be changed, the name of the new registered agent
12 and the new agent's written consent to the appointment. Such consent may be given
13 by electronic signature pursuant to chapter 53-12;

14 (6) That the address of its registered office and the address of the business office of its
15 registered agent, as changed, will be identical; and

16 (7) That such change was authorized by resolution duly adopted by the board of
17 directors.

18 Section 9. That § 47-24-6 be amended to read as follows:

19 47-24-6. Any domestic nonprofit corporation authorized to engage in business in this state
20 shall file, within the time prescribed by §§ 47-24-7 to 47-24-9, inclusive, a report setting forth:

21 (1) The name of the corporation;

22 (2) The street address, or a statement that there is no street address, of the registered
23 office of the corporation in this state and the name of its registered agent at such
24 address;

(3) A brief statement of the nature of the affairs which the corporation is conducting;

(4) The amount of property which the corporation may hold and the amount of property held; and

(5) The names and respective addresses of the directors and officers of the corporation.

The report shall be made on forms prescribed and furnished by the secretary of state and the information therein contained shall be given as of the date of the execution of the report. It shall be executed for the corporation by the ~~chairman~~ chair of the board of directors, by its president, or by another of its officers. ~~It shall be acknowledged by the officer executing the report.~~ If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, the report shall be executed ~~and acknowledged~~ on behalf of the corporation by that fiduciary.

Section 10. That § 47-27-18 be amended to read as follows:

47-27-18. Any foreign corporation authorized to engage in business in this state, shall file, within the time prescribed by this chapter, an annual report setting forth:

(1) The name of the corporation and the state or country under whose laws it is incorporated;

(2) The street address, or a statement that there is no street address, of the registered office of the corporation in this state and the name of its registered agent at such address and the address of its principal office in the state or country under whose laws it is incorporated;

(3) A brief statement of the character of the affairs which the corporation is conducting in this state; and

(4) The names and respective addresses of the directors and officers of the corporation.

The annual report shall be made on forms prescribed and furnished by the secretary of state and the information therein contained shall be given as of the date of the execution of the report.

1 It shall be executed ~~and acknowledged~~ by the ~~chairman~~ chair of the board, by the corporation's
2 president or another of the corporation's officers or, if the corporation is in the hands of a
3 receiver, trustee, or other court-appointed fiduciary, it shall be executed ~~and acknowledged~~ on
4 behalf of the corporation by that fiduciary.

5 Section 11. That § 47-2-30 be amended to read as follows:

6 47-2-30. Any registered agent of a corporation may resign as agent upon filing an original
7 written notice thereof with the secretary of state and by mailing an exact or conforming copy
8 thereof ~~with by certified mail, return receipt requested, to the secretary of state, who shall mail~~
9 ~~the copy to the corporation at its registered office~~ corporation. The appointment of the agent
10 shall terminate thirty days after receipt of notice by the secretary of state.

11 Section 12. That § 47-9-2 be amended to read as follows:

12 47-9-2. The annual report required by § 47-9-1 shall be made on forms prescribed and
13 furnished by the secretary of state and the required information shall be given as of the date of
14 the execution of the report, except as to the information required by subdivisions 47-9-1(7) and
15 (8), which shall be given as of the close of business on the day prior to the anniversary date of
16 the corporation next preceding the date provided in § 47-9-3 for filing such report. It shall be
17 executed by the ~~chairman~~ chair of the board of directors, by its president, or another of its
18 officers or if the corporation has not been formed, by an incorporator, or, if the corporation is
19 in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary. ~~The~~
20 ~~report shall be acknowledged.~~

21 Section 13. That § 47-8-12 be amended to read as follows:

22 47-8-12. A foreign corporation authorized to do or engage in business in this state may
23 change its registered office or change its registered agent, or both, upon filing in the Office of
24 the Secretary of State a statement setting forth:

- 1 (1) The name of the corporation;
- 2 (2) The street address, or a statement that there is no street address, of its current
- 3 registered office;
- 4 (3) If the address of its registered office is to be changed, the street address, or a
- 5 statement that there is no street address, of the new registered office;
- 6 (4) The name of its current registered agent;
- 7 (5) If its registered agent is to be changed, the name of the successor registered agent and
- 8 ~~his~~ the registered agent's written consent to the appointment;
- 9 (6) That the address of its registered office and the street address of the business office
- 10 of its registered agent, as changed, will be identical;
- 11 (7) That such change was authorized by resolution duly adopted by its board of directors.
- 12 Such statement shall be executed by the corporation by its president or a vice-president;
- 13 ~~acknowledged by him,~~ and delivered to the secretary of state.